IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
MISCELLANEOUS CIVIL APPLICATION NO.99 OF 2006

Ms Mugdha Jitendra Phadke ...Applicant

vs.

Jitendra Vasant Phadke ...Respondent

Mr.Sachin Punde for the Applicant
Ms Leena Patil for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 19, 2007.

P.C.:

1. Heard Advocates for the parties. The Applicant is the wife and the Respondent is the husband. The Respondent filed a Petition for dissolution of marriage against the Applicant in the Family court at Bandra, Mumbai. There is an Application being Misc.Application No.641 of 2006 filed by the Applicant against the Respondent under section 125 of the Code of Criminal Procedure,1973 for grant of maintenance. The said Application is pending in the Court of Judicial Magistrate, First Class, Nasik.

2. The prayer in this Application is for transfer of the Petition pending in the Family Court at Bandra to the Court of Civil Judge, Senior Division, Nasik. The prayer for transfer is on the ground that the Applicant is the resident of Nasik and it is very inconvenient for the Applicant to undertake the travelling from Nasik to Mumbai for attending the Family Court at Bandra. It is stated that the travelling time between the

Nasik and Mumbai is 5 hours and considering the financial condition of the Applicant, she is unable to undertake the travelling upto Mumbai. Application is strongly opposed by the Advocate for the Respondent.

3. A reply has been filed to the Application. In the said reply, it is stated that the Respondent is unable to undertake the travelling on account of injury. Reliance is placed on the certificate dated 3rd October 2006 issued by an Orthopaedic Surgeon. It is stated that the Respondent is suffering from Leg DVT and OA knee.

4. I have considering the submissions. The certificate produced by the Respondent is of 3rd October 2006 which records that the Respondent is unfit for long distance travelling. It must be noted here that the Application for maintenance filed by the Applicant under section 125 of the said Code of 1973 is pending in the Court of Judicial Magistrate First Class Nasik and in any event the Respondent is required to attend to the said proceeding in the court at Nasik. It is desirable that both the pending proceedings are heard by one and the same court. The Trial Court will not insist on personal presence of the Respondent unless it is absolutely mandatory.

5. Hence, I pass the following order :

i) M.J.Petition No.A-763 of 2006 is hereby transferred to the Court of Civil Judge, Senior Division, Nasik.

ii) The learned District and Sessions Judge, Nasik will transfer the Misc.Application No.641 of 2006 filed by the Applicant under section 125 of the Code of Criminal Procedure,1973 to the Court of Civil Judge, Senior Division,Nasik.

iii) The learned Civil Judge, Senior Division, Nasik will hear and decide both these matters together. The learned Judge will not insist on personal presence of the Respondent unless his presence is absolutely mandatory. Hearing of both the proceedings is expedited.

iv) Application is allowed in above terms.

v) Writ to be sent immediately.

JUDGE